



**University of
Zurich**^{UZH}

**Zurich Open Repository and
Archive**

University of Zurich
University Library
Strickhofstrasse 39
CH-8057 Zurich
www.zora.uzh.ch

Year: 2009

Itineraries of an idea: a constitutional convention for Cyprus

Auer, Andreas

DOI: <https://doi.org/10.1080/19448950903381958>

Posted at the Zurich Open Repository and Archive, University of Zurich

ZORA URL: <https://doi.org/10.5167/uzh-32784>

Journal Article

Originally published at:

Auer, Andreas (2009). Itineraries of an idea: a constitutional convention for Cyprus. *Journal of Southern Europe and the Balkans*, 11(4):359-362.

DOI: <https://doi.org/10.1080/19448950903381958>

Itineraries of an idea: a constitutional convention for Cyprus

ANDREAS AUER

This Special Issue represents another step in the already quite long history of the idea of a constitutional convention for Cyprus.

It all began, so to say, in December 2004, when I was invited to an academic conference in Athens and asked to present a paper on possible lessons for Cyprus from the Swiss experience. After showing that the Annan Plan, despite its wording and pretension, had little if anything in common with Swiss federalism and democracy, I recalled the constitutional lessons we learnt in the 1970s when a new canton—Jura—was added to the Swiss Confederation and ended by mentioning the idea of a constitutional convention as a possible means to draft a new and democratic constitution for Cyprus. The immediate reaction was harshly negative. Complacent smiles politely told me that I had totally ignored the Cyprus problem, which I could not, and still cannot, deny.

During the summer of 2005, an eight-member International Expert Panel¹ convened by the (Greek) Committee for a European Solution for Cyprus worked out a piece entitled 'A Principled Basis for a Just and Lasting Cyprus Settlement in the Light of European and International Law'. Slowly, after endless and thorny discussions in the Panel, the convention idea made headway, gained some support and was finally presented as 'the way forward' to possibly solve the Cyprus problem. The paper was first presented in September 2005 to the political leaders and the media in Cyprus and then formally submitted to the European Parliament in October 2005. Again, especially in Brussels, I had the impression that this thing called a constitutional convention aroused considerable suspicion and incomprehension.

Feeling that this suspicion might have stemmed from the fact that the International Expert Panel did not have representatives of the Turkish Cypriot and Turkish side, the Centre for Research on Direct Democracy (c2d) organized an academic workshop in Geneva in June 2006 with participants representing all parties to the Cyprus conflict: Greece and Turkey, England and the USA, the two main Cypriot communities and Switzerland as a neutral chair.² The aim was to

¹Professors Andreas Auer (Switzerland), Marc Bossuyt (Belgium), Peter Burns (Canada), Alfred de Zayas (USA), Silvio Marcus-Helmons (Belgium), George Kasimatis (Greece), Dieter Oberndörfer (Germany) and Malcolm Shaw (UK).

²Professor Andreas Auer (c2d, Switzerland), Aristos Doritis (Athens), Professor Rusen Ergec (Brussels), Professor Niyazi Kizil Gurek (Nicosia), Professor Ibrahim Kaboglu (Istanbul), Sulen Karabacak (TRNC), Professor George Kassimatis (Athens), Nick Lazarou (Athens), Fernando Mendez (c2d, UK), Professor Kudret Ozersay (TRNC), Ilker Gokhan Sen (Eskisehir) and Professor Alfred de Zayas (USA).

discuss and evaluate the basic proposal of a constitutional convention for Cyprus. Still, misunderstandings about the convention idea did not completely disappear.

In January 2008 I tried to restate, to summarize and develop this idea in a paper entitled 'On the Way to a Constitutional Convention for Cyprus' that was published on the c2d website,³ commented upon by the international academic community and served as a starting point to a bridge-building international academic conference held in April 2008 in Aarau (Switzerland).

The conference was supposed to deal with process only, and not with product, trying to outline the basic legal principles that must guide the convention process and to imagine the sequence of steps that could lead to a solution, from its opening to its conclusion, without touching on the contents of a new constitutional arrangement.⁴

The conference was a failure in so far as the separation of process and product was constantly ignored by participants of both camps, each one trying, according to what seems to be a well-established Cypriot tradition, to put the responsibility for past failures, present stalemates and future threats on the other. But it was a success in the sense that, for the first time, scholars from all latitudes were discussing an idea that put the people of Cyprus in the centre of a process from which it has always been, and still remains, systematically and radically excluded. Bringing in the people is indeed the sole objective pursued by the c2d in its strong but exclusively academic commitment for a democratic settlement of the Cyprus crisis.

And yet, one has to admit that, in five years, the idea of a constitutional convention for Cyprus has not found so far any substantial and significant support, neither among the various EU or UN agencies dealing with the issue, nor among the political leaders and members of the Greek and the Turkish communities of Cyprus. It has remained a marginal phenomenon, confined to academic circles and deliberately ignored by the main actors of the Cyprus game. Why is this so?

The papers published in the Special Issue do not, as a whole, provide a comprehensive answer to this question. Yet there are some hints and indeed a few hits.

'Why should political elites', ask Fernando Mendez and Vasiliki Triga, 'give up their ability to shape a foundational constitutional arrangement that will determine the eventual rules of the game to a body that may ultimately escape their control?' Here we have the first and perhaps the most decisive hit. The process of democratic constitution-making through a constitutional convention cannot ignore the political leaders and parties in both constituencies. Yet it cannot, without sacrificing its democratic credo, give them any power to decide on the outcome of this process. 'Ordinarily,' they continue, 'elites would need to be under an extraordinary compulsion to give up this power.' So far, there has been no such compulsion on either side.

Marise Cremona and Nikos Skoutaris argue that, 'In thinking about the idea of a constitutional convention there is an inherent tension between [...] the

³Available at <<http://www.c2d.ch>>.

⁴Available at <<http://www.aconstitutionalconventionforcyprus.ch>>; Andreas Auer and Vasiliki Triga, *A Constitutional Convention for Cyprus*, Wissenschaftlich Verlag, Berlin, 2009.

understandable desire to avoid preconditions (or even second-guesses) as to the substance of the outcome of the Convention, and on the other the requirements of legitimacy, which are of course not only procedural in nature’.

That is an interesting hint as well. The implications of Cyprus’ EU membership for a possible settlement of the conflict through a convention have to be thoroughly taken into consideration. The authors consider that ‘the employment of derogations [to the EU *acquis*] is a political issue that the constitutional convention [...] would need ultimately to determine’.

Mehmet Karli puts his finger on an admittedly weak point of the convention proposal: the role of the International Expert Panel in defining the rules of the game through the drafting of the Charter that would be submitted to the first round of double majority referendums. He states that: ‘The question of how the members of the International Expert Panel will be selected is not determined in the proposal. Therefore, it is not wrong to deduce that the proposal grants the Panel the power to inflict reputational costs, and there is no democratic source for this power’. That is a hit again, for the attempt to substitute democratic legitimacy with academic scrutiny and objectivity is risky indeed. It shows that the legal basis problem is crucial to any settlement of the Cyprus problem, and terribly difficult. Solutions other than academic prevalence may ultimately prevail.

According to Philip Terrence Hopmann, ‘the long history of animosity and distrust between the two parties makes it difficult to reach an agreement to call a constitutional convention, much less an agreement upon a Constitution that can be passed by referendums on both sides’. And ‘a risk of convening a constitutional convention is that, by broadening political participation, it might introduce into the process the mistrust and animosity between the two communities that has created their divergent identities in the past’. That might be a hint. But also a strong incentive to finally put aside the worn out technique of top-down negotiations in favour of a bottom-up approach.

Klearchos A. Kyriakides warns ‘... that the ambit of any constitutional convention should extend beyond purely constitutional matters so as to encompass all aspects of the Cyprus Question, including those relating to security and guarantees’. He then goes on by inviting the three guarantor powers, ‘in order to avoid the stance they adopted back in 1959, [...] to issue a public proclamation in which they undertake to accept and act upon any settlement reached on the island by its citizens’. Such a proclamation would definitely be a hit in Athens, Ankara and London.

Finally, Vassilis K. Fouskas and Alex O. Tackie convincingly, but rather aggressively, demonstrate that ‘any new constitutional convention in Cyprus has to take into account the economic conditions in the island’s northern security sector, particularly today in view of the global asymmetrical impact of the financial crisis’. This might be considered as a final hint, as the economic situation of both communities most certainly has to be taken into account by the convention process.

Critics of the convention idea can be found among members and representatives of both Cypriot communities. But they are harshest among those who tend to support the Turkish Cypriot side. This is surprising. As Mendez and Triga accurately recall, the very legitimacy of what the most recent

legal opinion calls the local de facto regime called TRNC⁵ rests entirely on a constitutional convention. How can one globally reject an item for the whole that has been successfully used in a part?

* * *

This is it. As academics oblivious to any political agenda relating to Cyprus, we have to be aware that we can go no further. In its continuous effort to promote a democratic issue to the Cyprus problem, the c2d has gone to the very outer limit of academic commitment. This commitment stems from the conviction that academics need not confine themselves to ivory towers, that research on democracy must be applied to actual problems of our time, that other countries' experiences with democracy and constitutionalism might be of some help to understand and hopefully overcome one of the most divisive conflicts within Europe over the last 50 years. That task, however, is all but academic.

L'aqua va al mare the Italians say. Like the water flowing from the mountains towards the sea, the convention idea will eventually make its way. But then, as we all know, human constructs and political institutions do not generally follow the laws of nature. That leaves the responsibility for realizing (or not) the idea of a constitutional convention with the people of Cyprus.

Andreas Auer is currently a professor of constitutional law at the University of Zurich and Director of the Zentrum für Demokratie Aarau (ZDA), as well as the Director of the Centre for Research on Direct Democracy (czd) in Aarau.

Address for correspondence: Zentrum für Demokratie Aarau (ZDA), Blumenhalde, Küttigerstrasse 21, 5000 Aarau, Switzerland. E-mail: andreas.auer@zda.uzh.ch

⁵Astrid Epiney and Bernhard Hofstötter, 'Zur Stellung von Nordzypem und Nordzypem im europäischen Gemeinschaftsrecht', in Astrid Epiney, Bernhard Hofstötter, Ulrich Haltern and Atalay Ileri, *Zypern in der europäischen Union: Ausgewählte völker- und europarechtliche Aspekte*, Nomos Verlagsges, Zurich, 2008, pp. 67–187.

Copyright of Journal of Balkan & Near Eastern Studies is the property of Routledge and its content may not be copied or emailed to multiple sites or posted to a listserv without the copyright holder's express written permission. However, users may print, download, or email articles for individual use.